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28 MAR 1979

MEMORANDUM FOR: Chief, Personal Affairs Branch
FROM : [REDACTED] Chief
Benefits and Services Division
SUBJECT : Compensation of Imprisoned Alien
Employees (U)

1. Public Law 95-105, dated 17 August 1977, provided for compensating alien employees of the U. S. Government if they are imprisoned because of that employment relationship. The Law leaves determination of eligibility up to the Secretary of State for all agencies except our own. In the case of CIA, the DCI has this authority. (U)

2. Nothing has yet been put into Agency publications on this subject. As far as the State Department is concerned, we are only aware of FAMC No. 766, a copy of which is attached. Before we take any action, it is important that we determine what procedures State has established and how they have handled claims, if any, thus far. Through the Central Cover Staff we have obtained the name of an individual at the State Department who is knowledgeable about this program. His name is Pete Gregory. I want you to meet with him and learn what you can regarding what State has done thus far. You are to contact Gregory through [REDACTED] an employee in CCS. [REDACTED] can help you get in touch with [REDACTED] if you need it. Please try to accomplish this meeting by 15 April and give me a report of your findings. (C)

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WARNING NOTICE
SENSITIVE INTELLIGENCE SOURCES
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"(i) was subject to section 8334(a) of such title during the period of his or her Government employment last preceding the imprisonment; or

"(ii) qualifies for annuity benefits under such subchapter III by reason of other service; or

"(B) for purposes of subchapter I of chapter 8 of title 5, United States Code, unless the individual was employed by the United States Government at the time of his or her imprisonment.

"(2) No compensation or other benefit shall be awarded under paragraph (1) unless a claim therefor is filed within three years after—

"(A) the date of the enactment of this subsection;

"(B) the termination of the period of imprisonment giving rise to the claim; or

"(C) the date of the claimant's first opportunity to file such a claim, as determined by the appropriate agency head;

whichever is later.

"(3) The Secretary of State may prescribe regulations governing payments under this subsection for the guidance of all agencies."

(2) The amendment made by paragraph (1) of this subsection shall apply with respect to all past, present, and future qualified employees, but no monthly compensation or annuity payment under title 5, United States Code, that may be approved by reason of such amendment shall be effective prior to the first day of the first month which begins on or after the date of enactment of this Act or October 1, 1977, whichever is later. Payments that may be authorized under such amendment, other than annuity or monthly compensation payments referred to in the preceding sentence, shall be paid from funds appropriated after such date of enactment for salaries and expenses.

5 USC 8331.

Compensation claims, filing.

Regulations.

Effective date.
22 USC 889 note.

5 USC 101 et seq.

AMBASSADORS FOR SPECIAL MISSIONS

SEC. 403. Section 501(c) of the Foreign Service Act of 1946 (22 U.S.C. 901(c)) is amended by inserting immediately before the period at the end thereof the following: "if the President, before conferring such rank, reports in writing to the Committee on Foreign Relations of the Senate his intent to confer such rank and transmits therewith all materials relating to any potential conflicts of interest relevant to such person".

Presidential report to congressional committee.

CITIZENSHIP REQUIREMENT

SEC. 404. Section 515 of the Foreign Service Act of 1946 (22 U.S.C. 910) is amended by striking out "and has been such for at least ten years".

CAREER CANDIDATE PROGRAM

SEC. 405. Section 516 of the Foreign Service Act of 1946 (22 U.S.C. 911) is amended by—

(1) amending the section heading to read "Admission to Class 6, 7, or 8";

(2) striking out "shall" and inserting in lieu thereof "may" in the last sentence of subsection (a); and

(3) adding the following subsection at the end thereof:

"(c) Foreign Service officer candidates who have passed examinations described in subsection (a) may be appointed by the Secretary, under such regulations as he may prescribe, for a trial period of service as Foreign Service Reserve officers of class 7 or 8. Such appoint-

Foreign Service Reserve officers, trial period.

PUBLIC LAW 95-105—AUG. 17, 1977

PUBLIC L

- (d) Section 5 of such Act (22 U.S.C. 2874) is amended—
- (1) in subsection (a) by striking out "Radio Free Europe and Radio Liberty" and inserting in lieu thereof "RFE/RL, Incorporated,";
 - (2) in subsection (b) by striking out "Radio Free Europe and Radio Liberty" and inserting in lieu thereof "RFE/RL, Incorporated,"; and
 - (3) in subsection (c)—
 - (A) by striking out "the radio to which the grant is to be made" and inserting in lieu thereof "REF/RL, Incorporated,"; and
 - (B) by striking out "that radio" and inserting in lieu thereof "RFE/RL, Incorporated,".

TITLE IV—FOREIGN SERVICE AND OTHER PERSONNEL

SERVICE AS CHIEF OF MISSION

SEC. 401. Section 431(c) of the Foreign Service Act of 1946 (22 U.S.C. 881(c)) is amended by inserting "or Reserve officer" immediately after "officer" both places it appears.

COMPENSATION OF ALIEN EMPLOYEES

SEC. 402. (a) Subsection (b) of section 444 of the Foreign Service Act of 1946 (22 U.S.C. 889(b)) is amended by inserting "and any other establishments of the Government, including those in the legislative and judicial branches," immediately after "Government agencies".

(b) (1) Such section 444 (22 U.S.C. 889) is further amended by adding the following new subsection at the end thereof:

"(c) (1) The head of any agency of the United States, including any agency of the legislative or judicial branch of the United States, may compensate any current or former alien employee, including an alien employee who worked under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary of State (or, in the case of an alien employee of the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the alien's employment by the United States. Such compensation may not exceed an amount that such agency head determines approximates the salary and other benefits to which such employee or former employee would have been entitled had he or she remained employed during the period of such imprisonment, and may be paid under such terms and conditions as the Secretary of State deems appropriate. For purposes of making payments authorized by this subsection, the head of any such agency shall have the same powers with respect to imprisoned alien employees and such former employees as any head of an agency under the provisions of subchapter VII of chapter 55 of title 5, United States Code, to the extent that such powers are consistent with this paragraph. Any period of imprisonment of an alien which is compensable under this subsection shall be considered for purposes of any other employee benefit to be a period of employment by the United States Government, except that a period of imprisonment shall not be creditable—

"(A) for purposes of subchapter III of chapter 83 of title 5, United States Code, unless the individual either—

"(i) was subject to a period of his or her imprisonment; or
 "(ii) qualifies for a period of III by reason of a
 "(B) for purposes of the United States Code, United States Government
 "(2) No compensation shall be paid under paragraph (1) unless a period of after—

"(A) the date of the termination of the claim; or
 "(C) the date of the termination of the claim, as determined by whichever is later.

"(3) The Secretary of State shall make payments under this subsection.
 "(2) The amendment shall apply with respect to employees, but no month after October 1, 1977, which ever under such amendment, payments referred to in this subsection shall be made from funds appropriated after the date of the amendment.

AMBASSA

SEC. 403. Section 501(c) of the Foreign Service Act of 1946 (22 U.S.C. 901(c)) is amended at the end thereof the following: "and such rank, reports in writing to the Senate his intent to resign, and all materials relating to such person".

CITIZEN

SEC. 404. Section 515 of the Foreign Service Act of 1946 (22 U.S.C. 910) is amended by striking out "years".

CAREER

SEC. 405. Section 516 of the Foreign Service Act of 1946 (22 U.S.C. 911) is amended by—

(1) amending the first sentence to read "6, 7, or 8";

(2) striking out "the last sentence of such regulation";

(3) adding the following:

"(c) Foreign Service regulations described in subsection (b) shall apply under such regulations as may be prescribed by the Secretary of State as Foreign Service regulations."

Imprisonment
resulting from
employment by
United States,
continued
compensation.

5 USC 5561.

5 USC 8331.



Foreign Affairs Manual Circular

VOL. 3 - PERSONNEL

FAMC No. 766

ICA No. 15D & 15F

Date: October 2, 1978

UNIFORM STATE/AID/ICA ISSUANCE

COMPENSATION OF IMPRISONED ALIENS

1. Purpose

This circular establishes terms and conditions for authorizing compensation payments for current or former alien employees of State, AID, and ICA, who are or were imprisoned by foreign governments as a result of their employment by the United States.

2. Definitions

a. "Agency" means the Department of State, the Agency for International Development (AID), or the International Communications Agency (ICA).

b. "Claimant" means an employee, dependents, executor of a former employee's estate, court appointed guardian, or other legally-qualified person.

c. "Compensation" means basic salary (including regular periodic step-increases), premium compensation, bonus payments, and any other pay or allowances authorized the employee in the local compensation plan.

d. "Dependent" means a spouse; an unmarried child (including an unmarried dependent stepchild or adopted child) under 21 years of age; a dependent mother or father; a dependent designated in official records; or an individual determined to be dependent by the agency head concerned or designee.

e. "Employee" means any current or former alien employee of State/AID/ICA, including one under a personal services contract when authorized by law, who is or has been imprisoned by a foreign government.

f. "Principal U.S. representative" means the principal State Department representative in a foreign country.

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3. Authority

a. Legal

Section 402 of Public Law 95-105 (91 Stat. 852; 22 U.S.C. 889), approved August 17, 1977, provides for compensation of certain alien employees imprisoned by a foreign government, under regulations prescribed by the Secretary of State.

b. Authority Under the Missing Persons Act

The following officials, for purposes of this circular, are authorized to exercise the same powers with respect to current or former alien employees as the agency head has under subchapter VII of chapter 55 of title 5, U.S. Code, to the extent that such powers are consistent with this circular:

- (1) State: The Deputy Under Secretary for Management.
- (2) AID: The Director, Office of Personnel and Training or designee.
- (3) ICA: The Director, Office of Personnel Services.

c. To Determine Validity of Imprisonment

The State Deputy Assistant Secretary for Personnel having jurisdiction over the administration of the local personnel program is authorized to determine that an alien employee's imprisonment is or was the result of the alien's employment by the United States. ✓

d. To Approve Payment

The following officials are authorized to approve payment of compensation under the terms and conditions in this circular:

- (1) State: The Deputy Assistant Secretary for Personnel.
- (2) AID: The Director, Office of Personnel and Training or designee.
- (3) ICA: The Director, Office of Personnel Services.

4. Applicability

This circular applies to current or former alien employees of the agencies, including persons employed under personal services contracts, when authorized by law, who are or were imprisoned by foreign governments as a result of U.S. Government employment.

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5. Locating and Notifying Eligible Persons

Agencies are responsible for making a reasonable effort to locate and notify all eligible persons of their possible entitlement under this circular and assisting them in submitting claims.

6. Filing Deadline

No compensation or other benefit shall be awarded under this circular unless a claim is filed within 3 years after:

- a. August 17, 1977;
- b. The termination of the period of imprisonment giving rise to the claim; or
- c. The date of the claimant's first opportunity to file such a claim, as determined by the appropriate agency official listed in paragraph 3d, whichever is later.

7. Qualifying Terms and Conditions

The following qualifying terms and conditions govern payment of compensation under this circular:

- a. The employee (including an alien employee under a personal services contract authorized by law) was employed by the U.S. Government at the time of imprisonment;
- b. The employee was imprisoned by a foreign government;
- c. The employee's imprisonment was the result of employment by the U.S. Government;
- d. Where payment is to be made to a claimant other than the employee, the claimant has legitimate right to payment as determined by the appropriate agency official listed in paragraph 3d;
- e. A claimant (principal or beneficiary) is barred from assignment of rights or benefits granted under this circular;
- f. For periods of imprisonment that terminated prior to August 17, 1977, payment is authorized only to an employee or former employee alive as of that date who files a claim within the time limits in paragraph 6, and there is reasonable evidence still available that the claimant was imprisoned as a result of employment by the U.S. Government; and

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g. For periods of imprisonment that terminate on or after August 17, 1977, payment is authorized to an employee, to dependents while the employee is imprisoned, and, upon death of the employee during imprisonment, to dependents in the order of precedence in paragraph 2d, or other person, whom the Deputy Assistant Secretary for Personnel determines to be entitled to payment.

8. Amount of Benefit

a. Compensation may not exceed an amount that the appropriate agency official listed in paragraph 3d determines approximates the salary and other benefits to which an employee or former employee would have been entitled had the individual remained employed during the period of such imprisonment.

b. An appropriate agency official listed in paragraph 3d will deny or reduce compensation to employees who may have received other relief, such as through private legislation enacted by the Congress.

9. Procedures

a. Making Application

The claimant submits a written application for compensation under this circular to one of the following, as appropriate:

- (1) The agency facility, in the locality of imprisonment, for whom the employee worked at the time of imprisonment;
- (2) The principal U.S. representative when the employing agency is no longer located in the locality of imprisonment;
- (3) The diplomatic mission representing the United States in the locality of imprisonment; or
- (4) For State, the appropriate bureau executive director, and for AID and ICA, the appropriate official, listed in paragraph 3d, of the agency for whom the employee worked when imprisoned, if submission to one of the contact points listed in paragraphs 9a(1), (2), or (3) is not feasible.

b. Documentation

The claimant or the employee's agency must obtain and submit to the appropriate agency official listed in paragraph 9a(4) the following in support of a written claim:

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- (1) A certified copy of official records, including Notification of Personnel Action, verifying employment and the salary and other benefits being paid the employee at time of imprisonment, the dates of beginning and ending of imprisonment, and an estimated cost of payment of the claim;
- (2) Official documents verifying the amount of salary and other benefits which would have been payable had employment continued through the period of imprisonment, and a statement as to whether the employee received other financial relief, such as through private legislation enacted by the Congress;
- (3) Legal documents supporting the relationship of the employee to the claimant, if other than the employee;
- (4) Documentation of the agency's investigation of the claim, including circumstances leading to and the reasons for imprisonment; and
- (5) Recommendation of the principal U.S. representative in the country in which imprisonment occurred (or the appropriate agency official listed in paragraph 9a(4), if there is no longer U.S. representation in the country), including a statement as to whether imprisonment was the result of employment by the U.S. Government.

c. Approval of Claim

- (1) For State, the appropriate bureau executive director, having jurisdiction over the post by whom the employee was last employed preceding imprisonment, forwards the claimant's application and the documents listed in paragraph 9b, together with a recommendation, to the Deputy Assistant Secretary for Personnel for determination that imprisonment is or was the result of the alien's employment by the U.S. Government, and for approval of the claim;
- (2) For AID and ICA, the appropriate official listed in paragraph 3d forwards the claimant's application and the documents listed in paragraph 9b, together with a recommendation, to the Deputy Assistant Secretary for Personnel, Department of State, Washington, D.C. 20520, for determination

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that imprisonment is or was the result of the alien's employment by the U.S. Government.

- (3) The Deputy Assistant Secretary for Personnel advises the appropriate AID or ICA official listed in paragraph 3d in writing of that determination.
- (4) After the appropriate approving officer (see paragraph 3d) signs the approval memorandum, that officer shall forward that memorandum with supporting documentation for payment to one of the following, as appropriate:
 - (a) State: The appropriate payroll center;
 - (b) AID: The Chief, Employee Services Division (FM/ESD); or
 - (c) ICA: The Chief, Financial Operations Division (MGT/BF).
- (5) After certifying payment, the certifying official will promptly advise the appropriate agency official listed in paragraph 3d.

10. Notification of Payment

The appropriate agency official listed in paragraph 3d will promptly notify the claimant if payment has been approved and, if so, that a check will be processed by the appropriate payroll center.

11. Other Benefits

Any period of imprisonment of an alien which is compensable under this circular shall be considered for purposes of any other employee benefit to be a period of employment by the U.S. Government, with the following exceptions:

- a. A period of imprisonment shall be not creditable toward Civil Service retirement unless the employee was covered by the Civil Service Retirement and Disability System during the period of Government employment last preceding the imprisonment, or the employee qualifies for annuity benefits by reason of other services; and/or
- b. A period of imprisonment shall not be considered for purposes of workers' compensation under subchapter I of chapter 81 of title 5, U.S. Code, unless the employee was employed by the U.S. Government during the period of imprisonment.

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12. Advisory Services

The Local Personnel Division (PER/ES/LP), Bureau of Personnel, Department of State, will provide interpretive and advisory services relating to any aspect of this circular.

13. Special Instructions

- a. When this circular conflicts with regulations contained in volume 3 (Personnel) of the Foreign Affairs Manual, this circular will prevail.
- b. Cross-reference this circular to 3 FAM 972.

14. Expiration

This circular expires on October 1, 1979, unless it is canceled, codified, or further extended before that date.

(PER/MGT)

(NOTE--Number of last circular issued: FAMC NO. 765.)